

12-22-04

DAE



PATENTS
15343-0028C3

#11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re The Application of:
Theodore Spielberg

Serial No.: 09/928,392

Filed: August 13, 2001

For: MICROPOROUS ENCAPSU-
LATED ENDOCRINE CELL
DISKS, BICONCAVE DISKS AND
MULTIDIMPLED CHAMBERS
FOR HORMONAL REPLACE-
MENT

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Examiner: Nickol, G.

Art Unit: 1642

RECEIVED
DEC 27 2004
OFFICE OF PETITIONS

Cesari and McKenna, LLP
88 Black Falcon Avenue
Boston, MA 02210
December 21, 2004

"Express Mail" Mailing-Label Number: EV 335591686 US

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION TO REVIVE UNDER 37 C.F.R. §1.137(a)

Pursuant to 37 C.F.R. §1.137(b), we respectfully petition the Commissioner to re-
vive the above-referenced patent application, which was unavoidably abandoned for fail-
ure to receive to an Office Action mailed on March 19, 2004. The entire delay in filing

12/23/2004 AWONDAF1 00000007 09928392

01 FC:2452

250.00 OP

the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(a) was unavoidable.

The Notice of Abandonment was mailed by the PTO on December 2, 2004. Upon receipt of this notice, Applicant confirmed that the PTO correspondence address associated with this application is up-to-date.

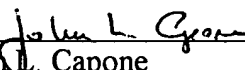
Pursuant to MPEP 711.03(c), Applicant submits herewith the Declaration of Rocio Archila ("Archila Declaration"). The Archila Declaration attests to the fact that a search of the file jacket and docket records relating to this patent application indicate that the Office communication was not received. The Archila Declaration provides a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed. The Archila Declaration further attests to the fact that the non-received Office action would have been docketed on the docket record for this patent application.

Based upon the totality of this information, Applicant respectfully requests that the Commissioner grant this Petition and withdraw the notice of abandonment that has been entered in this application file.

A check for \$ 250 is enclosed to cover the Petition Fee.

Please charge any additional fees that may be required by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,



John L. Capone
Reg. No. 41,656
CESARI AND McKENNA, LLP
88 Black Falcon Avenue
Boston, MA 02210-2414
(617) 951-2500



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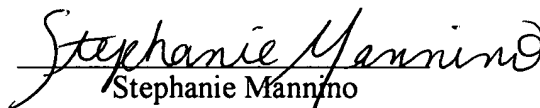
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DEC 27 2004

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Cesari and McKenna, LLP
88 Black Falcon Avenue
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December 21, 2004

CERTIFICATE OF TRANSMISSION

I hereby certify that the following paper is being deposited with the United States Postal Service as express mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on December 21, 2004.


Stephanie Mannino

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION OF ROCIO ARCHILA

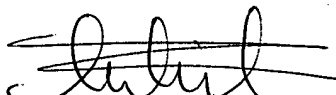
I, Rocio Archila, hereby submit this Declaration:

1. I reside at 52 Pearl Street, Watertown, Massachusetts 02472. The facts stated herein are of my own personal knowledge, and if called to do so, I am competent and willing to testify to the truth of the same.
2. I am currently employed by the law firm of Cesari and McKenna, L.L.P., whose business address is 88 Black Falcon Avenue, Boston, Massachusetts 02210. My current title is Docketing Clerk, a position I have held without interruption since June 2002.
3. As part of my job responsibilities, I record all mail sent to and received from the U.S. Patent and Trademark Office (USPTO) into a docketing system. I am the only employee at Cesari and McKenna who updates the contents of the docketing system in this manner.
4. The docketing system at Cesari and McKenna presently includes a record corresponding to the U.S. Patent Application Serial Number 09/928,392, entitled *Micro-porous encapsulated Endocrine Cell Disks, Biconcave Disks and Multidimpled Chambers for Hormonal Replacement*, filed August 13, 2001. The complete docketing record for this U.S. patent application is attached hereto as Exhibit A.
5. As shown in the attached Exhibit A, the only USPTO correspondence that I have docketed for U.S. patent application 09/928,392 since September 26, 2003, when our return postcard was received, is a Notice of Abandonment, mailed by the USPTO on December 2, 2004.
6. At no time have I entered a docketing entry corresponding to an Office Action received for U.S. Patent Application Ser. No. 09/928,392. If an Office Action had

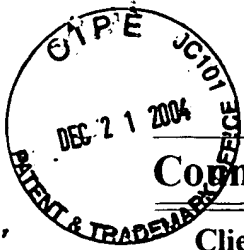
been received by Cesari and McKenna, I would have recorded an appropriate entry in the docketing record attached hereto as Exhibit A.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Executed on December 21, 2004



Rocio Archila



Country Application

Friday, December 17, 2004

Client-Matter #: 15343-0028 Country: US SubCase: C3

Client: 15343 - THEODORE E. SPIELBER United States of America

Case Type: CON

Application Status: Published

Application Number: 09/928,392

Filing Date: 13-Aug-2001

Patent Number:

Issue Date:

Publication Number: 01-0049130

Publication Date: 06-Dec-2001

Priority Number: 09/397,780

Priority Date: 16-Sep-1999

Tax Schedule: LE

Expiration Date:

Tax Start Date:

Agent:

Agent Reference Number:

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DEC 27 2004

OFFICE OF PETITIONS

Title: MICROPOROUS ENCAPSULATED ENDOCRINE
CELL DISKS BICONCAVE DISKS AND
MULTIDIMPLED CHAMBERS FOR HORMONAL
REPLACEMENT

List Of Actions

Action(s) Due	Due Date		Action Taken
N/A OB PC RE APPL FILED	13-Aug-2001	Due Date	13-Aug-2001
N/A RETURN PC RE APPL FILED	20-Aug-2001	Due Date	20-Aug-2001
PRELIMINARY AMENDMENT	24-Aug-2001	Reminder	26-Oct-2001
N/A FILING RECEIPT	27-Aug-2001	Due Date	27-Aug-2001
IDS	13-Nov-2001	Due Date	13-Nov-2001
ST CK F. RECEIPT	13-Nov-2001	Reminder	27-Aug-2001
PRELIMINARY AMENDMENT (CF 3	24-Nov-2001	Reminder	24-Nov-2001
IDS (CF 1 MO)	13-Dec-2001	Due Date	13-Dec-2001
N/A NOTICE OF PUBLICATION	17-Dec-2001	Due Date	17-Dec-2001
PRELIMINARY AMENDMENT-CF 4	24-Dec-2001	Reminder	21-Dec-2001
IDS (CF 2 MOS)	13-Jan-2002	Due Date	13-Jan-2002
PRELIM. AMEND (CF 5 MOS)	24-Jan-2002	Reminder	23-Jan-2002
IDS (CF 3 MOS)	13-Feb-2002	Due Date	13-Feb-2002
PRELIM. AMEND (CF 6 MOS)	24-Feb-2002	Reminder	24-Feb-2002
IDS (CF 4 MOS)	13-Mar-2002	Due Date	13-Mar-2002
PRELIM. AMEND (CF 7 MOS)	24-Mar-2002	Reminder	24-Mar-2002
IDS (CF 5 MOS)	13-Apr-2002	Due Date	13-Apr-2002

Country Application

Friday, December 17, 2004

PRELIM AMEND (CF 8 MOS)	24-Apr-2002	Reminder	24-Apr-2002
IDS (CF 6 MOS)	13-May-2002	Due Date	13-May-2002
PRELIM AMEND (CF 9 MOS)	24-May-2002	Reminder	24-May-2002
IDS (CF 7 MOS)	13-Jun-2002	Due Date	14-Jun-2002
PRELIM. AMEND (CF 10 MOS)	24-Jun-2002	Due Date	24-Jun-2002
IDS (CF 8 MOS)	13-Jul-2002	Due Date	12-Jul-2002
PRELIM AMEND (CF 11 MOS)	24-Jul-2002	Due Date	24-Jul-2002
IDS (CF 9 MOS)	13-Aug-2002	Due Date	13-Aug-2002
PRELIM AMEND (CF 12 MOS)	24-Aug-2002	Due Date	24-Aug-2002
IDS (CF 10 MOS)	13-Sep-2002	Due Date	13-Sep-2002
PRELIM AMEND (CF 13 MOS)	24-Sep-2002	Due Date	24-Sep-2002
N/A OFFICE ACTION	19-Dec-2002		19-Dec-2002
CU O.A.	30-Dec-2002	Reminder	02-Jan-2003
O.A TO CLIENT	06-Jan-2003	Due Date	17-Mar-2003
1 MOS O.A. DUE	16-Jan-2003	Due Date	17-Mar-2003
Application Status Check	13-Feb-2003	Due Date	19-Dec-2002
IDS (CF 15 MONTHS)	13-Mar-2003	Due Date	06-Dec-2004
N/A OFFICE ACTION	17-Mar-2003		17-Mar-2003
PRELIM AMEND (CF 17 MO)	24-Mar-2003	Due Date	24-Mar-2003
O.A. TO CLIENT	02-Apr-2003	Reminder	12-Jun-2003
CU O.A.	12-May-2003	Reminder	12-Jun-2003
N/A OB PC: OA RESP/AMDNMNT	12-Jun-2003		12-Jun-2003
O.A. DUE	12-Jun-2003	Due Date	12-Jun-2003
N/A RETURN PC MAILED: 6/12/03	23-Jun-2003		23-Jun-2003
N/A OFFICE ACTION	21-Aug-2003		21-Aug-2003
CU O.A.	02-Sep-2003	Reminder	19-Sep-2003
O.A TO CLIENT	09-Sep-2003	Due Date	19-Sep-2003
1 MO O.A. DUE	19-Sep-2003	Due Date	19-Sep-2003
N/A OB PC: OA RESP/AMDNMNT	19-Sep-2003		19-Sep-2003
N/A RETURN PC MAILED: 9/19	26-Sep-2003		26-Sep-2003
N/A ABANDONMENT	02-Dec-2004		02-Dec-2004
CU - PETITION TO REVIVE	02-Jan-2005	Reminder	
DUE: REVIVAL PETITION	02-Feb-2005	Due Date	

User ID: Jennifer

Date Created: 14-Aug-2001

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Last Update: 18-Dec-2001



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EXPRESS-MAIL DEPOSIT

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"Express Mail" Mailing-Label Number: EV 335591686 US

The following papers are being deposited with the United States Postal Service
"Express Mail Post Office to Addressee" service pursuant to 37 C.F.R. §1.10:

X Check No. 29720 for \$250
X Declaration of Rocio Archila

X Petition to Revive
X Return Request Postcard